

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

PAUL BIRCHMAN, <i>et al.</i>,)	
)	
Plaintiffs,)	
)	
v.)	Cause No. 1:19-cv-00128-HAB-SLC
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

OPINION AND ORDER

Before the Court is a motion to compel filed on October 5, 2020, by Defendant, seeking to compel Plaintiff Paul Birchman and Plaintiff Kathy Birchman to fully respond to its interrogatories and requests for production served on June 17, 2020. (ECF 15). Plaintiffs have not filed a response to the motion, and the time to do so has now passed. N.D. Ind. L.R. 7-1(d)(2)(A). For the following reasons, Defendant's motion to compel will be GRANTED.

A. Procedural Background

On March 28, 2019, Plaintiffs filed this suit against Defendant under the Federal Tort Claims Act, alleging claims of negligence and professional malpractice in connection with the medical care provided to Paul Birchman by the Department of Veterans Affairs at the Fort Wayne Indiana Veterans Medical Center. (ECF 1). The Court conducted a scheduling conference on September 27, 2019, setting a discovery deadline of September 25, 2020, which was later extended to January 8, 2021. (ECF 9, 10, 12).

On June 17, 2020, Defendant served interrogatories and requests for production of documents on Plaintiffs. (ECF 15 ¶ 2). As of the date it filed the present motion, Defendant had not received any answers or responses to this discovery from Plaintiff Kathy Birchman. (*Id.* ¶ 4).

Defendant did receive answers to fourteen of the seventeen interrogatories from Plaintiff Paul Birchman on September 17, 2020, but he did not sign the interrogatories; nor did Paul Birchman respond to any of Defendant's requests for production. (*Id.* ¶ 6). Defendant's counsel attempted to confer in good faith with Plaintiffs' counsel, but Plaintiffs' counsel did not communicate when complete answers and responses would be provided to Defendant. (*Id.* ¶ 7; *see* ECF 15-1). Consequently, on October 5, 2020, Defendant filed the instant motion to compel. (ECF 15). As stated earlier, Plaintiffs have not responded to the motion, and their time to do so has now passed.

B. Applicable Law

"Under Federal Rule of Civil Procedure 37, a party is permitted to file a motion to compel discovery where another party fails to respond to interrogatories or requests for production of documents." *See Redmond v. Leatherwood*, No. 06-C-1242, 2009 WL 212974, at *1 (E.D. Wis. Jan. 29, 2009). Together with the motion to compel, a party must file "a separate certification that the party has conferred in good faith or attempted to confer with the other affected parties in an effort to resolve the matter raised in the motion without court action." N.D. Ind. L.R. 37-1(a); *see* Fed. R. Civ. P. 37(a)(1). "A motion to compel discovery pursuant to Rule 37(a) is addressed to the sound discretion of the trial court." *Redmond*, 2009 WL 212974, at *1 (citation omitted).

C. Discussion

Defendant's counsel has adequately attempted to confer in good faith with Plaintiffs' counsel in an effort to resolve this matter without Court action. *See* Fed. R. Civ. P. 37(a)(1); N.D. Ind. L.R. 37-1(a). For the most part, Plaintiffs' counsel seems to have ignored Defendant's discovery requests and the instant motion to compel. Consequently, the Court will GRANT the motion to compel and order Plaintiff Paul Birchman and Plaintiff Kathy Birchman to on or before November 6, 2020, fully

answer Defendant's interrogatories and fully respond to Defendant's requests for production of documents served on June 17, 2020, and properly sign such answers and responses. *See, e.g., Redmond*, 2009 WL 212974, at *1, 3 (granting plaintiff's motion to compel where defendants appeared to have "entirely ignored the plaintiff's discovery requests").

D. Conclusion

For the foregoing reasons, Defendant's motion to compel (ECF 15) is GRANTED. Plaintiff Paul Birchman and Plaintiff Kathy Birchman are ORDERED to on or before November 6, 2020, fully answer Defendant's interrogatories and fully respond to Defendant's requests for production of documents served on June 17, 2020, and properly sign such answers and responses.

SO ORDERED.

Enter for this 23rd day of October 2020.

/s/ Susan Collins
Susan Collins
United States Magistrate Judge